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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,033	12/30/2004	Raquel Lia Chan	2510.0040000/JAG/SAC	2792
26111 7590 08/11/2009 STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005				
EXAMINER				
BAUM, STUART F				
ART UNIT		PAPER NUMBER		
1638				
MAIL DATE		DELIVERY MODE		
08/11/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/520,033

**Applicant(s)**

CHAN ET AL.

**Examiner**

STUART F. BAUM

**Art Unit**

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8/22/08, 1/23/09, 5/22/09, 7/31/09.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10, 14, 15, 17, 18, 21 and 41-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10, 14, 15, 17, 18 and 21 is/are rejected.
- 7) ☒ Claim(s) 41-48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2004 and 22 August 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-846)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/30/2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The amendments filed 8/22/2008 and 1/23/2009, the sequence listing filed 5/22/2009 and the request under Rule 48 correcting inventorship filed 7/31/2009 have been entered.
2. Claims 10, 14-15, 17-18, 21 and 41-48 are pending.  
Claims 41-48 have been newly added and are drawn to the elected invention.  
Claims 1-9, 11-13, 16, 19-20 and 22-40 have been canceled.
3. Claims 10, 14-15, 17-18, 21, 41-48, including SEQ ID NO:1, 2, 23, 24 and 30 are examined in the present office action.
4. Rejections and objections not set forth below are withdrawn.

### ***Inventorship***

5. In view of the papers filed 7/31/2009 the inventorship in this nonprovisional application has been changed by the deletion of Claudio Marcelo Dunan.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

### ***New Matter***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 10, 14-15, 17-18 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims have been amended to recite “that encodes a protein comprising (1) a Hd-Zip domain that binds SEQ ID NO:23 attached to (2) SEQ ID NO:30”. Applicants point to support for the phrase in the instant specification (see page 11 of Remarks filed 8/22/2008, 1<sup>st</sup> full paragraph) but said locations within the specification do not support the amendment to the claims. Upon a cursory search of the specification, support could not be found. Applicants are required to point to support for “that encodes a protein comprising (1) a Hd-Zip domain that binds SEQ ID NO:23 attached to (2) SEQ ID NO:30” or to amend the claims to delete the NEW MATTER.

The Office contends the specification does not disclose SEQ ID NO:30 as a separate entity. Figure 1 purportedly displays “The homeodomain is shown in bold” (as recited in the Brief Description of the Drawings), but no such highlighted amino acids are evident in the submitted Figure 1. The Office contends the prior art teach that the homeodomain and the leucine zipper comprise the Hd-Zip domain which binds DNA. Applicants do not teach the amino acids that delineate the Hd-Zip domain from other amino acids in the sequence. In addition, there is no contemplation by Applicants that the amino acids of SEQ ID NO:30 are an entity all by themselves. Therefore, there is no support for SEQ ID NO:30.

7. Claims 10, 14-15, 17-18, 21, 41-48 are deemed free of the prior art, given the failure of the prior art to teach or reasonably suggest a transgenic plant, plant seed or method of producing a water stress tolerant transgenic plant comprising a nucleic acid molecule comprising a nucleic acid sequence that encodes a protein comprising (1) a Hd-Zip domain that binds SEQ ID NO:23 attached to (2) SEQ ID NO:30, or wherein said nucleic acid sequence encodes SEQ ID NO:24 or wherein said nucleic acid sequence is selected from the group consisting of SEQ ID NO:1 and SEQ ID NO:2.

8. Claims 41-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stuart F. Baum whose telephone number is 571-272-0792. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached at 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Stuart F. Baum/  
Stuart F. Baum Ph.D.  
Primary Examiner  
Art Unit 1638  
July 31, 2009